



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
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Legal & Regulatory Group

January 12, 2004

Via E-Mail

Federal Trade Commission
Office of the Secretary
Room 159-H
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Proposed Effective Dates for the FACT Act, Project No. P044804

Dear Sir/Madam:

The National Automobile Dealers Association (“NADA”) submits the following comments in response to the Joint Notice of Proposed Rulemaking (“JNPR”) from the Federal Trade Commission (“FTC”) and the Board of Governors of the Federal Reserve System (“Board”) to establish a schedule of effective dates for several of the provisions contained in the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act” or “Act”).

NADA represents over 20,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together our members employ in excess of 1.1 million people nationwide. A significant portion of our members are small businesses as defined by the Small Business Administration.

NADA submits these brief comments to voice its concern about the accelerated implementation dates the agencies have proposed for provisions they acknowledge will impose new duties and modify existing duties on users of consumer reports and others that currently are governed by the Fair Credit Reporting Act. Although we recognize the statutory confines within which the agencies must operate, we wish to stress the need for the agencies to promulgate exceptionally clear and streamlined rules to permit our members to adequately comply with their new responsibilities.

Proposed Effective Dates

As explained in the JNPR, the FACT Act requires the FTC and the Board to jointly adopt by February 4, 2004 effective dates for those provisions of the Act that do not specifically contain an effective date. These dates must be “as early as possible, while allowing a reasonable time for... implementation’..., but in no case later than ten months after the date” in which the agencies establish the effective dates.” 68 Fed. Reg. 74,529 – 74,530.

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In an effort to meet this deadline, the FTC and the Board propose to bifurcate the effective dates into two categories: March 31, 2004 for the self-effectuating provisions that “do not require significant changes to business procedures,” and December 1, 2004 for “other provisions without effective dates that would require changes in systems, disclosure forms or practices, or implementing regulations to be administered effectively.” The agencies state that the December 1, 2004 effective date “will allow industry and the various agencies a reasonable time to establish systems and rules to implement these sections effectively.” 68 Fed. Reg. 74,530.

NADA’s Concerns

In proposing December 1, 2004 as an effective date for provisions that will involve significant changes to business procedures, the agencies have prudently chosen a date at the end of the implementation deadline established in the FACT Act. Our concern, however, rests with the agencies’ assumption that this period will allow industry a “reasonable time to establish systems ... to implement these sections effectively.” Id.

Although we are unaware of the ultimate changes that will be contained in the final rules implementing the FACT Act, the agencies have established December 1, 2004 as the effective date for those provisions that “would require changes in systems, disclosure forms or practices, or implementing regulations to be administered effectively.” Whereas this time period theoretically may be feasible with rules that involve small, minor changes to the business procedures of the affected entities, it is entirely too short for rules that involve “significant changes to business procedures.” Id.

The FTC’s recent experience implementing the FTC Privacy Rule (16 C.F.R. Part 313) and FTC Customer Information Safeguards Rule (16 C.F.R. Part 314) should make this abundantly clear. Both of these rules involved the imposition of new duties on entities regulated by the FTC. The period of time between the FTC’s issuance of its final Privacy Rule (May 24, 2000) until the final date for fully complying with the Privacy Rule (July 1, 2001) was over 13 months. The period of time between the FTC’s issuance of its Customer Information Safeguards Rule (May 23, 2002) until the effective date of that rule (May 23, 2003) was one year. In both cases, our members and those of other regulated industries found it exceedingly difficult to ensure their systems and operations were fully compliant by the effective dates of these rules. This occurred notwithstanding their good faith efforts, valuable assistance from staff attorneys with the FTC’s Division of Financial Practices and a massive educational campaign on the new requirements by NADA and numerous state and metro dealer associations across the country.

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Although it is unknown how extensive the changes will be from the rules implementing the FACT Act, we do know the comparatively short compliance window within which our members and other businesses will have to fully comply. Industry already is nearly 10 months out from the proposed effective date for these significant changes and the agencies have not proposed, let alone finalized, the final substantive rules that will govern our members. We believe the accelerated implementation period that will result will create a significant burden on these small and mid-size entities.

Conclusion

In light of these concerns, we urge the agencies to develop clear, streamlined rules that small businesses can adjust to in a short period of time. We also ask that you consider the collective regulatory burden that the federal government has imposed on our members and not merely the burden that will result from implementation of the FACT Act. The last several years has witnessed a significant increase in statutory and regulatory requirements confronting our members and any new rules, no matter how streamlined, will produce a corresponding compliance burden.

We appreciate the opportunity to comment on this matter.

Sincerely,

Paul D. Metrey
Director, Regulatory Affairs